

## **GENERAL COUNSEL MEMORANDUM**

**Issue: Sales Tax on Hotel Attrition Fees and Cancellation Fees**

**Statute Ref: D.C. Official Code § 47-2002(2), Imposition of Sales Tax; D.C. Code § 47-2002.2(1), Tax on Gross Receipts for Transient Lodging; D.C. Code § 47-2001(n)(1)(C), Definitions.**

**January 4, 2002 [Originally Issued as a Private Letter Ruling]**

### **ISSUES:**

- (1) Whether the Attrition Fee charged by HOTEL is subject to District sales tax in circumstances where a Convention CLIENT cancels part or all of a block of reserved rooms without proper notice?
- (2) Whether the Cancellation Fee charged by HOTEL is subject to District sales tax in circumstances where a Convention CLIENT reserves a meeting room or banquet facility for an event and subsequently cancels that reservation?

### **CONCLUSION:**

- (1) The Attrition Fee charged by HOTEL is subject to District sales tax in circumstances where a Convention CLIENT cancels part or all of a block of reserved rooms without proper notice.
- (2) The Cancellation Fee charged in the form of a forfeited deposit by HOTEL is not subject to District sales tax.

### **FACTS:**

- (1) HOTEL is a large hotel in Washington DC that caters to Convention Clientele. Convention CLIENT entered into a contract with HOTEL for the reservation of *X* number of rooms for *Y* number of days in the month of *Z*. HOTEL and Convention CLIENT negotiated a specific rate for the rooms, banquet service and other charges. The contract contained a cancellation clause under which Convention CLIENT agreed to pay for the rooms not used at the special contract room rate plus an additional sum to offset lost banquet food and beverage revenue unless 30 days notice is provided to HOTEL. These fees are called "attrition fees." The contract does not address whether the attrition fee is subject to District sales tax. Convention CLIENT failed to use all the rooms contracted for. HOTEL billed Convention CLIENT for the unused rooms but does not charge District sales tax.
- (2) In the event that a meeting room or banquet facility has been reserved for an event and subsequently cancelled, HOTEL retains any previous deposit or charges a fee representing a non-performance penalty.

### **TAXPAYER ARGUMENT:**

The HOTEL asserts that a charge for a guestroom is not taxable unless the room is "furnished" to a "transient." HOTEL states that the attrition fee was for a person who did not occupy the room

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when contracted to do so. HOTEL states that the fee charged constitutes non-taxable liquidated damages for not using reserved rooms and for failing to give notice of cancellation in time to permit those rooms to be re-sold.

HOTEL asserts that under the definition in Section 47-2001(n)(1)(C), the charge for rental of a public meeting room or banquet facility does not meet the definition of a "retail sale." Therefore, any charge relating to the usage or non-usage, i.e., cancellation, should not be subject to sales tax.

**LAW:**

D.C. Code § 47-2002. Imposition of tax *[in pertinent part]*

A tax is imposed upon all vendors for the privilege of selling at retail certain tangible personal property and for the privilege of selling certain selected services (defined as "retail sale" and "sale at retail" in this chapter).

\* \* \*

(2) The rate of tax shall be 10.05% of the gross receipts from the sale *of or charges for any room or rooms*, lodgings, or accommodations furnished to a transient by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients; \* \* \* [Emphasis added.]

D.C. Code § 47-2002.2. Tax on gross receipts for transient lodgings or accommodations; \* \* \* *[in pertinent part]*

A tax, separate from, and in addition to, the tax imposed pursuant to § 47-2002, is imposed on vendors engaging in the business activities listed in paragraphs (1) and (2) of this section for the privilege of selling at retail certain tangible personal property and for the privilege of selling certain selected services (defined as "retail sales" and "sale at retail" pursuant to § 47-2001(n)(1)). The rate of the tax shall be:

(1) 4.45% of the gross receipts for the sale *or charges for any room or rooms*, lodgings, or accommodations furnished to a transient by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients; \* \* \* [Emphasis added.]

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D.C. Code § 47-2001.-Definitions. *[in pertinent part]*

(n) (1) "Retail sale" and "sale at retail" means the sale in any quantity or quantities of any tangible personal property or service taxable under the terms of this chapter. Said term shall mean all sales of tangible personal property to any person for any purpose other than those in which the purpose of the purchaser is to resell the property so transferred in the form in which the same is, or is to be, received by him, or to use or incorporate the property so transferred as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining. For the purpose of the tax imposed by this chapter, these terms shall include, but not be limited to, the following:

\* \* \*

(C) The sale *or charge for any room or rooms*, lodgings, or accommodations furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration. The term "transient" means any person who occupies or who has the right to occupy any room or rooms, lodgings, or accommodations \* \* \* [Emphasis added.]

**ANALYSIS:**

**(1) Attrition Fee.** Convention CLIENT's contract with HOTEL required HOTEL to set aside a number of rooms for a specified time frame. HOTEL complied with the terms of the contract by furnishing the number of room agreed upon. Convention CLIENT failed to use the number of rooms set aside. HOTEL billed Convention CLIENT the agreed room rate and sales tax on the room used and charged the agreed room rate on the unused rooms but did not charge sales tax.

For the sale or charge of any room or rooms to be subject to District sale tax, the room must be furnished to a transient by the hotel. D.C. Code § 47-2001(n)(1)(C). The statute does not require that the room be occupied. The statute does require that the person be provided with a room with the right to occupy the room.

When HOTEL furnished or provided the agreed upon number of rooms with the right of Convention CLIENT to occupy the rooms, Convention CLIENT was obligated to pay for the rooms furnished, whether occupied or not and the HOTEL is obligated to collect the District sales tax on the hotels rooms furnished, whether occupied or not. Even though Convention CLIENT did not occupy the complete block of rooms, the attrition fee is subject to tax.

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**(2) Cancellation Fee.** Since the rental charges for meeting and banquet rooms are not subject to District sales tax, the cancellation fee charged for the non-performance of the rental contract relating to meeting and banquet rooms would not be subject to District sales tax.

*For further information, please contact Ed Blick, General Counsel Office, at (202) 442-6509.*